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2023 Return Form Filing Program, Gazette Order, Public Rulings, Tax Cases and more

January 2023

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Greetings from Deloitte Malaysia Tax Services

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Deloitte Malaysia
Inland Revenue Board of Malaysia

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Important deadlines:

Task	Deadline	
	29 January 2023	**31 January 2023**
1. 2024 tax estimates for companies with February year-end	√	
2. 6th month revision of tax estimates for companies with July year-end		√
3. 9th month revision of tax estimates for companies with April year-end		√
4. Statutory filing of 2022 tax returns for companies with June year-end		√
5. Maintenance of transfer pricing documentation for companies with June year-end		√
6. 2023 CbCR notification for applicable entities with January year-end		√

1. Media Release – Use of "Bill Number" as mandatory reference for tax payments from 1 January 2023

The Inland Revenue Board of Malaysia (IRBM) issued a Media Release on 31 December 2022 to inform that **"Bill Number"** will be used as a mandatory reference for the payment of all types of direct taxes, except for payment of monthly tax deductions and stamp duty, beginning 1 January 2023.

The IRBM has also issued FAQs and a user manual in relation to the implementation of the **"Bill Number"** and e-biling system. The FAQs and user manual is available on the MyTax Portal at https://mytax.hasil.gov.my/ > click on User Manual > click on e-Biling System Usage Manual / e-Biling System FAQ.

Information regarding the **"Bill Number"** can be obtained from 1 January 2023 via the following methods:

i. Visit the MyTax Portal at https://mytax.hasil.gov.my/ > click on ezHasil Services > click on e-Billing.
ii. Stated in notices of assessment or estimates and letters of demand sent by the IRBM to taxpayers.

Payments can be made online or at the counters of the IRBM payment centres and through agent banks. For payment at counters and agent banks, taxpayers need to print the payment slip or download the required **"Bill Number"** by scanning the QR code on the payment slip.

During the transition period to the use of **"Bill Number"**, taxpayers can still use their Tax Identification Number (TIN) or Tax Reference Number for payment of direct taxes (except monthly tax deductions and stamp duty), until 30 June 2023.

Please visit the IRBM's official portal - https://www.hasil.gov.my/ for more information. Any questions and related feedback can be forwarded to the IRBM through the following channels:

a) HASiL Care Line at 03-8911 1000 or 603-8911 1100 (Overseas);
b) HASiL Live Chat; and
c) Feedback Form on the HASiL official portal at https://maklumbalaspelanggan.hasil.gov.my/MaklumBalas/ms-my/

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2. Return Form (RF) Filing Program for the year 2023

The IRBM has issued a Media Release on 1 January 2023 to inform that the Return Form (RF) Filing Program for the Year 2023 (2023 Filing Program) has been uploaded on its website.

The 2023 Filing Program is applicable until the following year's program is issued.

Salient points

1) Taxpayers and employers are encouraged to submit their respective RFs via e-Filing provided through the e-Filing facility. Moving forward, e-Filing will be the primary method for the submission of RFs. Tax agents, however, are encouraged to use TAeF for submission of RFs.

2) Effective 18 May 2021, HASiL has implemented a new prefix for individual taxpayers, changing from SG (individuals with non-business income source) and OG (individuals with business income source) to IG.

3) Submission of RFs such as Forms e-C, PT/e-PT, TC/e-TC, C1/e-C1, TA/e-TA, TR, and TN for the year of assessment (YA) 2023 are among the RFs listed in the 2023 Filing Program.

4) RF furnished via e-Filing / postal delivery after the due date for submission of the relevant RF shall be deemed to be received within the stipulated period if it is received within the grace period after the due date for submission of the mentioned RF. This grace period also applies to the payment of the balance of tax under Section 103(1) of the Income Tax Act 1967 (ITA) / Section 48(1) of the Petroleum (Income Tax) Act 1967 (PITA) for all RF (except Form E, Form P, and Form CPE) furnished via e-Filing / postal delivery.

5) Submission of Form E shall only be considered complete if it is furnished together with Form C.P.8D on or before the due date for submission of Form E by employers. Sole proprietorship, partnership, Hindu joint family, and deceased person's estate who do not have employees are exempted from submitting Form C.P.8D.

6) It is compulsory for dormant companies, limited liability partnerships, trust bodies, and co-operative societies to furnish the RF (including Form E and Form C.P.8D). [*Please refer to item 3 of the Guide Notes on Submission of RF attached to the 2023 Filing Program for details on dormant companies, limited liability partnerships, trust bodies, and co-operative societies.*]

7) Employers are encouraged to furnish information on employees' remuneration for the year 2022 using e-Data Praisi/e-CP8D. The information received will be prefilled into the employees' respective RFs (i.e., Forms e-BE, e-B, e-BT, e-M, and e-MT for the YA 2022) to save time and facilitate e-Filing submission by the employees. Employee's remuneration information can be furnished by the employers via the Mytax Portal from 1 January 2023 to 25 February 2023 (both dates inclusive).

8) Employers should refer to the C.P.8D Information Layout – Pin. 2022 format attached to the 2023 Filing Program as reference to furnish the information on employees' remuneration for the year 2022. Amendments to the employees' remuneration information after the submission can be made by the employers through the Mytax Portal or by sending an e-mail to pindaanE&CP8D@hasil.gov.my.

9) Form E and Form C.P.8D must be submitted to the Tax Information and Record Management Division, Tax Operations Department in accordance with the format and method of submission stipulated in item 2(i)(c) of the Guide Notes on Submission of RF attached to the 2023 Filing Program. Form E and Form C.P.8D which does not comply with the format and method of submission stipulated by HASiL will NOT be accepted.

10) Form E and Form C.P.8D must contain all particulars of employees (including full time / part time / contract employees and interns) and individuals who are responsible or engaged in the management of the organisation (including company directors, co-operative society's board members, association's controlling members, and partners of limited liability partnership).

11) Appendices / working sheets regarding the claim for a tax deduction under Section 110 of the ITA and tax relief under Sections 132 and 133 of the ITA shall be furnished and submitted together with the RF. [*Please refer to item 4(i) of the Guide Notes on Submission of RF attached to the 2023 Filing Program.*]

12) For assessments raised under Sections 91, 92, 96A, 90(3) and 101(2) of ITA, the tax / balance of tax must be paid within 30 days from the date of assessment. Nevertheless, a grace period of 7 days is given.

13) Where the method for the submission of Form C.P.8D is by uploading the Form C.P.8D in the form of txt via e-Data Praisi/e-CP8D, or through the e-Filing of Form E, employers are only required to upload the employees' particulars. [*Please refer to item 2 on page 1 of Part A - Guide on Submission of C.P.8D Particulars in TXT File attached to the 2023 Filing Program.*]

14) "SOCSO contribution" has been included under the Employees' Particulars. [*Please refer to page 3 of Part A - Guide on Submission of C.P.8D Particulars in TXT File attached to the 2023 Filing Program.*]

15) "Medical insurance" and "SOCSO contribution" have been included under the Guide on errors and error messages when using the provided Microsoft Excel format. [*Please refer to page 6 of Part B - Guide on Submission of C.P.8D Particulars in Microsoft Excel attached to the 2023 Filing Program.*]

Please refer to the Media Release and 2023 Filing Program for more details.

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3. Labuan Companies (Amendment) Regulations 2022, Labuan Foundations (Amendment) Regulations 2022 and Labuan Islamic Financial Services and Securities (Amendment) Regulations 2022 [P.U.(A) 348/2022]

The Labuan Companies (Amendment) Regulations 2022 [P.U.(A) 346/2022], Labuan Foundations (Amendment) Regulations 2022 [P.U.(A) 347/2022] and Labuan Islamic Financial Services and Securities (Amendment) Regulations 2022 [P.U.(A) 348/2022] were gazetted on 28 October 2022 to amend the following Regulations:

- Labuan Companies Regulations 2010 [P.U.(A) 414/2010];
- Labuan Foundations Regulations 2010 [P.U.(A) 418/2010]; and
- Labuan Islamic Financial Services and Securities Regulations 2010 [P.U.(A) 417/2010]

The respective Regulations above specify the general requirements for documents to be filed with the Labuan Financial Services Authority (the Authority), as well as the prescribed fees to be paid to the Authority as required under the Labuan Companies Act 1990, Labuan Foundations Act 2010, and Labuan Islamic Financial Services and Securities Act 2010 respectively.

With effect from 1 January 2023, the prescribed fees to be paid to the Authority as stipulated in the Third Schedule of the respective Regulations have been revised accordingly in the respective Amendment Regulations.

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4. Public Ruling No. 5/2022: Taxation of a Resident Individual Part II – Computation of Total Income and Chargeable Income

The IRBM recently issued Public Ruling (PR) No. 5/2022 (dated 9 December 2022) to replace PR No. 5/2018 (dated 13 September 2018).

The objective of this PR is to explain the computation of total income and chargeable income of a resident individual who derives income from business, employment, and other sources.

The updates and amendments to PR No. 5/2018 are listed in Paragraph 14 of the PR No. 5/2022.

Salient points

1) **Paragraph 8.3.1** which illustrates the computation of adjusted income/loss from a business source in a table, and **Paragraph 8.3.4(a)** of PR No. 5/2018 have been updated to reflect the amendments made to Section 34A(1) of the ITA via the Finance Act 2018 and Finance Act 2020 respectively. With effect from 1 January 2021, double deduction on research and development (R&D) expenditure under Section 34A of the ITA shall only be applicable to a person who is a resident in Malaysia in ascertaining his adjusted business income, provided the R&D expenditure has been approved by the Minister of Finance and that the R&D expenditure incurred for the basis period for a YA outside Malaysia does not exceed 30% of the total R&D expenditure incurred.

2) **Paragraph 8.3.3(f)** of PR No. 5/2018 has been updated to reflect amendment made to Section 34(6)(h) of the ITA via the Finance Act 2019. With effect from YA 2020, the scope of deduction under Section 34(6)(h) of the ITA is expanded to include expenditure incurred for the maintenance of a building designated as a national heritage site by the Commissioner of Heritage under the National Heritage Act 2005 [*Act 645*].

3) **Paragraph 8.3.3(i)** of PR No. 5/2018 has been updated to reflect amendment made to Section 34(6)(k) of the ITA via the Finance Act 2019. With effect from YA 2020, the total amount of deduction allowed for the expenditure incurred for sponsoring any arts, cultural or heritage activity approved by the Minister charged with the responsibility for arts, culture or heritage has been increased to RM1,000,000, of which the total amount of deduction allowed for the expenditure incurred in sponsoring foreign arts, cultural or heritage activity shall not exceed RM300,000.

4) **Paragraph 8.3.3(k)** of PR No. 5/2018 has been updated to reflect amendment made to Section 34(7) of the ITA via the Finance Act 2018. With effect from 28 December 2018, Section 34(7) of the ITA allows a person to claim deduction on expenses incurred in respect of R&D related to the business directly undertaken by him or on his behalf. *[**Note:** With*

effect from 1 January 2021, Section 34(7) of the ITA shall only be applicable to a person resident in Malaysia, amended via Finance Act 2020.]

5) **Paragraph 8.3.4(b)** of PR No. 5/2018 has been updated to reflect amendment made to Section 34B(1) of the ITA via the Finance Act 2020. With effect from 1 January 2021, the double deduction for the expenditure incurred in ascertaining the adjusted income from a business in relation to contribution made in cash to an approved research institute, payment for the use of the services of an approved research institute or an approved research company or payment for the use of the services of a research and development company or a contract research and development company shall only be allowed to a person resident in Malaysia.

6) **Paragraph 8.6(m)** is added to reflect the insertion of Section 39(1)(n) of the ITA via the Finance Act 2013. With effect from 26 December 2012, Section 39(1)(n) of the ITA restricts a person from claiming a deduction in respect of remuneration or similar payment made to a partner of a limited liability partnership where such remuneration or payment is not specified or provided in the limited liability partnership agreement made in accordance with Section 9 of the Limited Liability Partnerships Act 2012.

7) **Paragraph 8.6(q)** is added to reflect the insertion of, and amendment made to Section 39(1)(r) of the ITA via the Finance Act 2018 and Finance Act 2020 respectively. With effect from 1 January 2021, Section 39(1)(r) restricts a person resident in Malaysia from claiming a deduction in respect of payment made to any Labuan entity referred to in Section 2B(1)(a) of the Labuan Business Activity Tax Act 1990, unless otherwise allowed under the rules prescribed by the Minister of Finance.

8) **Paragraph 10.3** is added to reflect the amendment made to the time limit for carrying forward business loss under Section 44(5F) of the ITA via the Finance Act 2021. With effect from YA 2019, the unabsorbed adjusted losses incurred for a YA, which can be carried forward to be deducted in the subsequent YAs, are limited to a maximum of 10 consecutive YAs immediately after the YA in which such losses occur. Any balance of accumulated business losses up to YA 2018 can be carried forward until YA 2028.

9) **Paragraph 11(c)** of PR No. 5/2018 has been updated to clarify that the deduction for gifts and contribution made in cash under Sections 44(6), (6A), (8), (9), (10), (11), (11A), (11B), (11C) or (11D) of the ITA in the basis year shall be allowed if there is an aggregate income upon deducting the current year adjusted business loss [Section 44(2)] and qualifying prospecting expenditure (Schedule 4), as well as qualifying pre-operational business expenditure (Schedule 4B). In cases where the aggregate income is insufficient after those deductions, gifts and contribution which cannot be deducted from the aggregate income shall not be carried forward to the subsequent YA.

10) **Paragraph 12.5** of PR No. 5/2018 has been updated to provide further clarification with regards to the phrase "living together". A husband and a wife shall be deemed to be living together unless they are separated:
    (a) by a court order;
    (b) by a deed of separation;
    (c) by a written agreement for separation; or
    (d) in such circumstances that the separation is likely to be permanent.

11) **Paragraph 13.5** of PR No. 5/2018 has been updated to include the following expenses in the list of allowable expenses. Where in a YA a wife / husband elects for a combined assessment, or a wife / husband has no total income, the amount expended in respect of the allowable expenses by the wife / husband who elects or the wife / husband with no total income is deemed to have been expended by the spouse who is being assessed:

    (a) fee for COVID-19 detection test under Section 46(1)(h) of the ITA;
    (b) expenses incurred for the purchase of a personal computer, smartphone, or tablet under Section 46(1)(*t*) of the ITA; and
    (c) expenses incurred for the purchase of sports equipment for any sports activity listed under the Sports Development Act 1997 (excluding motorised two-wheel bicycles), rental or entrance fee to any sports facilities and registration fee for any sports competition where the organiser is approved and licensed by the Commissioner of Sports under the Sport Development Act 1997 under Section 46(1)(u) of the ITA.

12) The examples in **Paragraphs 8, 9, 10, 11, 12, and 13** have been amended and updated to the latest YAs accordingly.

Please refer to the PR No. 5/2022 for full details and illustrative examples for guidance.

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5. Public Rulings No. 6/2022, 7/2022, 8/2022, 9/2022, 10/2022, 11/2022, 12/2022, and 13/2022

The IRBM has recently uploaded the following Public Rulings (PRs) on its website:

PR No.	Remarks (Please access the PR for the full details)
6/2022 - Accelerated Capital Allowance (dated 22 December 2022)	This PR is the 3rd edition and the contents of PR No. 7/2018 dated 8 October 2018 have been updated and rearranged. The updates can be found on pages 34 and 35 of the PR No. 6/2022. The objective of this PR is to explain the tax treatment on qualifying plant and machinery for the purpose of claiming accelerated capital allowance (ACA) or the prescribed rates in determining the statutory income from a business. Key changes • Addition of Paragraph 7.7 which is in relation to ACA that is given for the purchase of mould used in the production of an Industrialised Building System component (IBS) for the purposes of the business of a manufacturing company or a construction company. [ACA is given at the rate of 40% for initial allowance (IA) and 20% for annual allowance (AA)]. • Addition of Paragraph 7.8 which is in relation to ACA that is given for the purchase of any "information and communication technology (ICT) equipment" including installation of such ICT equipment. [ACA is given at the rate of 20% for IA and 20% for AA]. • Paragraph 7.9 has been amended to reflect the amendment made to the Income Tax (Accelerated Capital Allowance) (Automation Equipment) Rules 2017 [P.U. (A) 252/2017] and Income Tax (Exemption) (No. 8) Order 2017 [P.U. (A) 253/2017] via the Income Tax (Accelerated Capital Allowance) (Automation Equipment) 2017 (Amendment) Rules 2020 [P.U. (A) 173/2020] and Income Tax (Exemption) (No. 8) 2017 (Amendment) Order 2020 [P.U. (A) 172/2020] respectively. These incentives have been extended from YA 2021 to YA 2023. [ACA is given at the rate of 20% for IA and 80% for AA. The exempt statutory income which is referred to in the PR as Automation Equipment Allowance (AEA) is equivalent to 100% of the eligible ACA amount ascertained based on 100% of the qualifying capital expenditure of the automation equipment but limited to 70% of statutory income of the qualifying project]. • Addition of Paragraph 7.10 which is in relation to ACA that is given for the provision of 'machinery and equipment' including ICT equipment except for motor vehicle, and used for the purpose of his business from 1 March 2020 until 31 December 2021 pursuant to the Income Tax (Accelerated Capital Allowance) (Machinery and Equipment including Information And Communication Technology Equipment) Rules 2021 [P.U. (A) 268/2021]. [ACA is given at the rate of 20% for IA and 40% for AA]. • Addition of Paragraph 7.11 which is in relation to ACA that is given to licensed tour operators for the purchase of new excursion buses. Effective from YA 2022, the period of the grant of ACA is extended until YA 2024. This means that licensed tour operators are eligible to claim ACA for capital expenditure incurred on the purchase of excursion buses made within three (3) years, i.e. from YA 2022 until YA 2024. [ACA is given at the rate of 20% for IA and 40% for AA].

7/2022 - Venture Capital Tax Incentives (dated 23 December 2022)	This PR is the 2nd edition which provides an explanation on the tax incentives in relation to the venture capital industry in Malaysia. This PR replaces PR No. 2/2016 dated 9 May 2016. The updates and amendments can be found on pages 16 and 17 of PR No. 7/2022. **Key changes** • **Paragraph 6** which is in relation to the tax exemption incentive for a venture capital company (VCC) investing in a Venture Company, has been amended in accordance to the Income Tax (Exemption) (No. 2) Order 2022 [P.U.(A) 115/2022]. P.U.(A) 115/2022 replaced the Income Tax (Exemption) (No.11) Order 2005 [P.U.(A) 75/2005], the Income Tax (Exemption) (Amendment) (No. 2) Order 2006 [P.U.(A) 420/2006], and the Income Tax (Exemption) (Amendment) Order 2009 [P.U.(A) 159/2009]. • **Paragraph 7** which is in relation to the tax deduction incentive for an individual or a company investing in a venture company or VCC, has been amended in accordance to the Income Tax (Deduction for Investment in a Venture Company or Venture Capital Company) Rules 2022 [P.U.(A) 117/2022]. P.U.(A) 117/2022 replaced the Income Tax (Deduction for Investment in a Venture Company) Rules 2005 [P.U.(A) 76/2005]. • **Paragraph 9** which is in relation to tax exemption for venture capital management company (VCMC) has been amended in accordance to the Income Tax (Exemption) (No. 3) Order 2022 [P.U.(A) 116/2022]. P.U.(A) 116/2022 replaced the the Income Tax (Exemption) (No.12) Order 2005 [P.U.(A) 77/2005].
8/2022 - Taxation of Limited Liability Partnership (dated 23 December 2022)	This PR is the 3rd edition explaining the tax treatment of a Limited Liability Partnership. This PR replaces PR No. 5/2015 dated 14 August 2015. The contents of this PR are essentially the same as the previous PR, and the amendments can be found on pages 24 and 25 of PR No. 8/2022.
9/2022 - Property Development (dated 23 December 2022)	This PR is the 2nd edition which explains the basis of ascertaining gross income for the purpose of computing adjusted income derived from the business of property development. This PR replaces PR No. 1/2009 dated 22 May 2009. The updates and amendments can be found on pages 46, 47 and 48 of PR No. 9/2022. **Key changes** • Addition of **Paragraph 12.11.3** which is in relation to show house expenditure. • Addition of **Paragraph 13.4** which is in relation to stock parted with by compulsion under Section 4C of the ITA. • Addition of **Paragraph 15.4** which is in relation to the active role in property development activities for joint venture.
10/2022 - Reinvestment Allowance Part I – Manufacturing Activity (dated 27 December 2022)	This PR is the 4th edition which assists a company resident in Malaysia and engaged in manufacturing activities, to ascertain its eligibility to claim reinvestment allowance (RA). This PR replaces PR No. 10/2020 dated 6 November 2020. The updates and amendments can be found on pages 52 and 53 of PR No. 10/2022. **Key changes** • **Paragraph 8.2** – Diagram 2 has been amended to clarify that the portion of the extension to the building used for the purpose of a qualifying project may be allowed an RA claim, i.e. RA is allowed on the extension of floor area but limited to 70% of the extension area (excluding 30% storage

	space) as shown in Diagram 2. Diagrams 3 and 4 have been added for further guidance. • Addition of **Paragraphs 9.6 and 9.7** which are in relation to the claim of additional RA under the PENJANA package (PENJANA RA) for the YA 2020 to YA 2024. • Addition of **Paragraph 10.5.7** which is in relation to the limitation on the carry forward period for unabsorbed PENJANA RA. The unabsorbed PENJANA RA balance can only be allowed to be carried forward to be absorbed up to a maximum period of 7 consecutive YAs after the PENJANA RA qualifying period ends in YA 2024. Calculation of 7-year period for accumulated unabsorbed PENJANA RA starts from YA 2025. If there remains an unabsorbed PENJANA RA balance at the end of YA 2031, the amount will be disregarded.
11/2022 - Reinvestment Allowance Part II – Agricultural and Integrated Activities (dated 27 December 2022)	This PR is the 3rd edition which assists a company resident in Malaysia and engaged in agricultural and integrated activities, to ascertain its eligibility to claim RA. This PR replaces PR No. 11/2020 dated 10 November 2020 and should be read together with PR No. 10/2022. The updates and amendments can be found on pages 24 and 25 of PR No. 11/2022. **Key changes** • Addition of **Paragraph 8** which is in relation to the qualifying period to claim RA, additional RA, and PENJANA RA. • Addition of **Paragraph 9** which is in relation to the tax treatment for RA claim on an agricultural project in Malaysia for the purpose of any qualifying project. • Addition of **Paragraph 10.4** which is in relation to the limitation on the carry forward period for unabsorbed PENJANA RA. The unabsorbed PENJANA RA balance can only be allowed to be carried forward to be absorbed up to a maximum period of 7 consecutive YAs after the PENJANA RA qualifying period ends in YA 2024. Calculation of 7-year period for accumulated unabsorbed PENJANA RA starts from YA 2025. If there remains an unabsorbed PENJANA RA balance at the end of YA 2031, the amount will be disregarded.
12/2022 - Commercialisation of Public Resource-Based Research and Development Findings, Part I – Tax Incentive for Investor Company (dated 29 December 2022)	This PR is the 1st edition which provides an explanation on the tax incentive available to a company investing in its related company for the sole purpose of financing the commercialisation of public resource-based R&D findings in Malaysia. This PR should be read together with PR No. 13/2022.
13/2022 - Commercialisation of Public Resource-Based Research and Development Findings, Part II – Tax Incentive for Eligible Company (dated 29 December 2022)	This PR is the 1st edition which provides an explanation on the tax incentive available to a company, in which its holding company has made investments, for the purpose of financing a project on the commercialisation of public resource-based R&D findings in Malaysia. This PR should be read together with PR No. 12/2022.

Please refer to the respective PRs for full details and illustrative examples for guidance.

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6. Petron Oil (M) Sdn Bhd & Anors v Ketua Pengarah Hasil Dalam Negeri (HC)

This was an appeal filed by Petron Oil (M) Sdn Bhd, Petron Malaysia Refining & Marketing Berhad, and Petron Fuel International Sdn Bhd (collectively known as the taxpayers), against the Deciding Order of the Special Commissioners of Income Tax (SCIT) which dismissed the taxpayers' appeal against the assessments raised by the Director General of Inland Revenue (DGIR) for the YA 2012. The SCIT disallowed the upfront fees, stamp duty charges, and legal fees (financing expenses) incurred by the taxpayers to obtain financing via two working capital facility agreements for the YA 2012.

Issue:

Whether the financing expenses incurred for the YA 2012 by the taxpayers in respect of financing obtained via two working capital facility agreements are deductible under Section 33(1) of the ITA.

Decision:

The High Court (HC) dismissed the taxpayers' appeal based on the following grounds of judgement:

- According to *Syarikat Pukin Ladang Kelapa Sawit Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* and *Strong & Co of Romsey Ltd v Woodfield*, it was a trite law that for an expenditure to be eligible for a deduction under Section 33(1) of the ITA, it must be incurred wholly and exclusively in the production of gross income. According to *Port Elizabeth Electric Tramway Co Ltd v CIR*, the term "wholly and exclusively incurred in the production of gross income" refers to expenses that are attached to the performance of a business operation, performed bona fide for earning income.

- Upon glancing through the taxpayers' nature and character of business, and the nature of the financing expenses incurred by the taxpayers, the HC was of the view that the financing expenses incurred by the taxpayers were merely for the purpose of obtaining/securing financial facilities from the financier. If the financing expenses were not incurred by the taxpayers, the financing facilities would not be made available to the taxpayers. In other words, the financing expenses were merely incurred to allow the taxpayers to obtain the working capital, instead of being used as working capital for the taxpayers' businesses.

- Going by the cases of *Ketua Pengarah Hasil Dalam Negeri v Seabanc Kredit Sdn Bhd* and *Ketua Pengarah Hasil Dalam Negeri v Persatuan Nelayan Kebangsaan*, the HC held that the financing expenses incurred by the taxpayers were made solely for the purpose of putting the income earning mechanism in place, and therefore such expenses were capital in nature.

- With the above in mind, the HC concluded that the decision of the SCIT was not tainted with any errors of law, irrationality and/or unreasonableness that warrants the intervention of the HC.

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7. Ehsan Armada Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)

This was an appeal filed by the taxpayer against the deciding order of the SCIT in disallowing a payment made by the taxpayer to obtain an exemption from the requirement to build low-cost housing.

The SCIT decided that the payment made by the taxpayer to the Lembaga Perumahan dan Hartanah Selangor (LPHS) to obtain exemption from the requirement to build low-cost apartments on its Mutiara Indah housing project was not deductible under Section 33(1) of ITA. Furthermore, the SCIT found that the taxpayer had been negligent, and the IRBM was not time-barred under Section 91(3) of the ITA from raising the notices of assessment and additional assessment. The SCIT concluded that the IRBM was correct in law and fact in imposing the penalties.

Issue:

Whether the SCIT was correct in deciding that the payment made by the taxpayer to LPHS for the purpose of obtaining the exemption was not deductible under Section 33(1) of the ITA.

Decision:

The HC allowed the taxpayer's appeal based on the following grounds:

- The payment was made by the taxpayer in the course of operating the taxpayer's business and to carry on its main activity, which was selling houses.
- An expenditure was not disqualified from deduction because the expenditure involved the attainment of profit.
- The HC recognised that a payment made to remove an impediment or obstacle to profitable trading or that result in the increase of income is attributable to revenue.
- By making the payment, the taxpayer could carry on with the development of the project, which had been completed, and generate income. Hence such payment was deductible under Section 33(1) of the ITA.
- The payment made was not capital in nature since the taxpayer had the right to sell. The payment was made to enable the taxpayer to widen the group or class of people it could sell to. The payment was therefore a normal business payment to produce income.
- The assessments and additional assessments had been raised more than 5 years from the expiration of the YAs in question, the DGIR was time-barred by Section 91(1) of the ITA.
- The penalty was unwarranted as the taxpayer had provided the IRBM with all the documents and information requested.

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8. Wiramuda (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (FC)

We came to know that an appeal was filed by Wiramuda (M) Sdn Bhd (the taxpayer) before the Federal Court (FC), against the decision of the Court of Appeal (COA) in dismissing the taxpayer's application for a judicial review whether Section 4C of the ITA contravenes Article 13(2) of the Federal Constitution and is unconstitutional.

The DGIR was of the view that the disposal of the land was taxable under Section 4(a) of the ITA.

Issue:

Whether Section 4C of the ITA is unconstitutional as it contravenes Article 13(2) of the Federal Constitution.

Decision:

On 9 December 2022, the FC overturned the decision of the COA and ruled that no tax shall be imposed on compensation received from compulsory acquisition of land or properties by the authorities. The FC held that Section 4C of the ITA, introduced in 2014 via Finance Act 2014, is unconstitutional as it contravenes Article 13(2) of the Federal Constitution which requires adequate compensation to be awarded for compulsory acquisition or use of property. Section 4C of the ITA requires gains or profits from a business under Section 4(a) of the ITA to include an amount receivable arising from stock in trade parted with by any element of compulsion, including on requisition or compulsory acquisition or in a similar manner. The imposition of tax on compensation received from compulsory acquisition reduces the amount of compensation received by the taxpayer, which removes the fundamental right of taxpayer to receive adequate compensation under Article 13(2) of the Federal Constitution. *[Note: The details of the FC's decision are not available as at the date of this publication. The summary of the case was prepared based on an article shared by EdgeProp.]*

Comment:

The unanimous judgement is a landmark tax decision as the FC has effectively struck down Section 4C of the ITA to be unconstitutional. This judgement significantly impacts taxpayers (especially property developers and landowners) who had paid income tax on such compensation in the past.

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9. International Naturopathic Bio-Tech (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (HC)

This was an appeal by the taxpayer by way of case stated against the deciding order of the SCIT.

The SCIT had decided that the taxpayer's disposal of properties was trading income subjected to income tax under Section 4(a) of the ITA and not capital gains under the Real Property Gains Tax Act 1976 (RPGTA).

Issues:

1) Whether the taxpayer's disposal of properties was capital gain subjected to real property gains tax under Section 3 of the RPGTA or trading income subjected to income tax under Section 4(a) of the ITA.

2) Whether the taxpayer is an "investment holding company" within the meaning of Section 60F of the ITA and, therefore, not trading in properties.

Decision:

The HC dismissed the taxpayer's appeal based on the following grounds:

- From the evidence presented before the SCIT, there was no reason to disagree with the SCIT's finding that the taxpayer was not an investment holding company within the meaning of Section 60F of the ITA. Further, the taxpayer in its written submission had abandoned or conceded on the issue. Therefore, it was a non-issue in this appeal.

- The taxpayer had wrongly declared the income gained from the disposal of the properties as profits from the disposal of assets when in fact the income obtained were profited from the taxpayer's business in trading of properties and was subjected to tax under Section 4(a) of the ITA.

- Based on the facts and evidence presented before the SCIT, the gains received by the taxpayer from the disposal of the properties were made with the intention to trade.

- The taxpayer's transactions clearly indicated that the taxpayer had profit seeking motive and fulfilled all the criteria of an adventure in the nature of trade.

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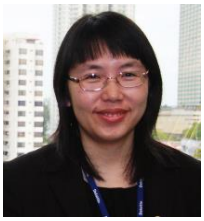

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